TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]150

G. D. COLLINS AND ROY MARSHALL, APPELLANTS,

vs.

COLONEL J. D. McDONALD, COMMANDANT OF DISCIPLINARY BARRACKS OF THE UNITED STATES, ALCATRAZ ISLAND, NORTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 3, 1921.

(27,935)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 578.

G. D. COLLINS AND ROY MARSHALL, APPELLANTS,

vs.

COLONEL J. D. McDONALD, COMMANDANT OF DISCIPLINARY BARRACKS OF THE UNITED STATES, ALCATRAZ ISLAND, NORTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 5, 1921.

a In the Southern Division of the District Court of the United States, for the Northern District of California, First Division.

No. 16893.

In the Matter of the Petition of G. D. COLLINS, for the Writ of Habeas Corpus in behalf of Roy Marshall.

1 United States of America, District Court of the United States, Northern District of California.

Clerk's Office.

No. 16893.

In the Matter of the Petition of G. D. COLLINS, for the Writ of Habeas Corpus in behalf of Roy Marshall.

Præcipe (for Transcript on Appeal.)

To the Clerk of Said Court:

SIR:

Please prepare transcript on appeal to include the following documents:

Petition for Writ of Habeas Corpus.

Rule Nisi.

Demurrer.

Order Sustaining Demurrer and Judgment denying Writ of Habeas Corpus.

Assignment of Errors.

Appeal to the Supreme Court of the United States.

Allowance of Appeal.

Citation on Appeal.

GEO. D. COLLINS, JR.,
Attorney for Petitioner.

(Endorsed:) Filed Sep. 22, 1920. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

2 In the Southern Division of the United States District Court in and for the Northern District of California.

In the Matter of the Petition of G. D. COLLINS, for the Writ of Habeas Corpus in behalf of Roy Marshall.

Petition for Writ of Habeas Corpus.

To the Honorable the United States District Court in and for the Northern District of California, Southern Division:

The petition of G. D. Collins respectfully shows to your Honorable Court that Roy Marshall is illegally imprisoned and restrained of his liberty at the Disciplinary Barracks on Alcatraz Island, in the Northern District of California, Southern Division, by Colonel J. D. McDonald, commandant of said barracks.

That said imprisonment is illegal in this that the same is under and by virtue of a void judgment of a General Court Martial of the United States Army, heretofore to wit: on the 11th day of February 1920, convened at Vladivostok, Siberia, wherein and whereby said void judgment the said Roy Marshall was found guilty by said court martial on the following specifications viz:

"Specification 1: In that Private Roy W. Marshal, Company "K", 31st Infantry, Private Gilbert Frey, Company "K", 31st Infantry, Private Gerald E. Troxler, Company "K", 31st Infantry, and Private James F. Hyde, Company "K", 31st Infantry, acting jointly and in pursuance of a common intent, did, at Vladivostok, Siberia, or or about the 14th day of January, 1920, by putting him in fear, feloniously take from the presence of Van Fun Un, 40 Koreaskays Street, Vladivostok, Siberia, the sum of about Ten Thousand (10,000) Roubles, value about Fifty Dollars ($50.00).

"Specification 2: In that Private Roy W. Marshall, Company "K", 31st Infantry, Private Gilbert Frey, Company "K", 31st Infantry, Private Gerald E. Troxler, Company "K", 31st Infantry, and
3 Private James F. Hyde, Company "K", 31st Infantry, acting jointly and in pursuance of a common intent, did at Vladivostok, Siberia, on or about the 16th day of January, 1920, by putting him in fear, feloniously take from the presence of Li Hun Yen, 24 Borodinskays Street, Vladivostok, Siberia, the sum of Thirty Thousand (30,000) Roubles, Two (2) gold rings, value about Seven Thousand (7,000) Roubles, one (1) gold coin, value about Ten (10) Roubles, of the total value of about Thirty-eight Thousand (38,000) Roubles, value about One Hundred and Ninety Dollars ($190.00).

Specification 3: In that Private Roy W. Marshall, Company "K", 31st Infantry, Private Gilbert Frey, Company "K", 31st Infantry, Private Gerald E. Troxler, Company "K", 31st Infantry, and Private James F. Hyde, Company "K", 31st Infantry, did, at Vladivostok, Siberia, on or about the 17th day of January, 1920, by putting him in fear, feloniously take from the presence of Mr. Ezdrisch,

165 Svetlanskays Street, Vladivostok, Siberia, the sum of about Nine Thousand (9,000) Roubles, value about Forth-five Dollars ($45.00).

That he was thereupon sentenced to imprisonment on said void judgment to McNeil's Island for the period of ten years, and is now held at said Disciplinary Barracks awaiting transportation to said McNeil's Island in execution of said sentence. Your petitioner avers that said judgment and sentence are void in this: That said court-martial had no jurisdiction to render said judgment, and for the following reasons, to wit: (1) That said specifications charge no crime known to the laws of the United States in that it does not appear therefrom that the property alleged to have been taken was not then and there the property of the accused. (2) That said property is not averred to have been in the care, possession, custody or control of the person from whose presence it is alleged to have been taken. (3) That the charge and specifications accuse said Roy Marshall, the said Frey, Troxler and Hyde with having jointly committed the acts therein averred. That such also are the findings and judgment of said court-martial. That the reviewing authority to wit: the President of the United States has disapproved of said findings and judgment respecting said Troxler and Frey and Hyde, concerning said specification No. 1 and has disapproved of said findings and judgment respecting said Frey and Hyde, concerning said specification No. 2. That as the joint finding and judgment is not approved as against all the accused jointly the same cannot be legally enforced against the said Roy Marshall, as the accusation, verdict and judgment against him is not several but joint. (4) That there was no evidence of guilt before said court-martial as against said Roy Marshall other than what purports to be his confession, made to and at the instance of his superior officer, and under duress. That said alleged confession was taken under oath and said Marshall was thereby compelled to be a witness against himself, in violation of the Fifth Amendment to the Constitution of the United States. That said alleged confession was not and is not shown before said court martial to be free and voluntary, and is uncorroborated. That said alleged confession does not state that said Roy Marshall took any money or property from any one by means of force or fear or otherwise.

That your petitioner makes this petition at the request of said Roy Marshall.

Wherefore your petitioner prays that the writ of Habeas Corpus be granted requiring the said Colonel J. D. McDonald to produce the body of the said Roy Marshall before your Honorable Court at a time and place designated; that upon return to the writ the said imprisonment be adjudged illegal and said Roy Marshall be ordered discharged.

G. D. COLLINS,
Petitioner.

GEO. D. COLLINS, JR.,
Attorney for Petitioner, and for said Roy Marshall.
506-508 Claus Spreckels Bldg., San Francisco.

5 NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

G. D. Collins, being duly sworn deposes and says that he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on his Information or belief; that as to those matters he believes it to be true.

G. D. COLLINS,
Petitioner.

Subscribed and sworn to before me this 21st day of July, 1920.
[SEAL.] E. J. CASEY,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed:] Filed Jul. 21, 1920. W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

6 In the Southern Division of the United States District Court In and For the Northern District of California.

(No. 16893).

In the Matter of the Petition of G. D. COLLINS for the Writ of Habeas Corpus in Behalf of Roy Marshall.

Rule Nisi.

In the above entitled matter it is ordered that Colonel J. D. McDonald, commandant of Disciplinary Barracks on Alcatraz Island, Northern District of California, Southern Division be and appear before the Southern Division of the United States District Court in and for the Northern District of California, Division One, on Saturday the 31st day of July 1920 at ten o'clock A. M. on that day, at the court-room of said court in the Post Office Building, corner of Seventh and Mission streets in the City and County of San Francisco, State of California, then and there to show cause if any he has why the writ of habeas corpus should not be ordered by said court to issue in behalf of Roy Marshall, a prisoner at said barracks. It is ordered that said Roy Marshall be not removed from the custody of said Colonel J. D. McDonald, until the further order of the Court. It is further ordered that a copy of the petition for said writ of Habeas Corpus and of this order to show cause be forthwith served on the said Colonel J. D. McDonald.

Dated this 21st day of July, 1920.

WM. H. SAWTELLE,
United States District Judge.

[Endorsed:] Filed Jul. 21, 1920. W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

7 In the Southern Division of the United States District Court, In and for the Northern District of California.

No. 16893.

In the Matter of the Petition of G. D. COLLINS for the Writ of Habeas Corpus in Behalf of Roy Marshall.

United States Marshal's Return of Service on Rule Nisi.

I, J. B. Holohan, United States Marshal in and for the Northern District of California, hereby certify that at San Francisco, California, on July 21, 1920, I received from G. D. Collins, Attorney at Law, on behalf of Roy Marshall one copy of Rule Nisi, the original of which was issued by Wm. H. Sawtelle, United States District Judge at San Francisco, California, on July 21, 1920, and thereafter on the same day I handed to and left said copy of said Rule Nisi, together with copy of Petition of G. D. Collins, Attorney at Law, on behalf of Roy Marshall, with R. D. Johnson, Captain F. A. Executive Officer P. B. U. S. Disciplinary Barracks, for and on behalf of Colonel J. D. McDonald, at Alcatraz Island, San Francisco Bay, State of California; said Johnson acting for and on behalf of Colonel J. D. McDonald, who was absent from said Alcatraz Island at the time of the service of this writ.

J. B. HOLOHAN.
United States Marshal.
By I. W. GROVER,
Deputy.

San Francisco, California, July 22, 1920.

[Endorsed:] Filed Jul. 22, 1920, W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

8 In the Southern Division of the United States District Court for the Northern District of California, First Division.

(No. 16893.)

In the Matter of the Petition of G. D. COLLINS for the Writ of Habeas Corpus in behalf of Roy Marshall.

Demurrer.

Now comes the respondent, Colonel J. D. McDonald, Commandant of the United States Disciplinary Barracks at Alcatraz Island, California, in the Southern Division of the Northern District of California, and demurs to the petition for a Writ of Habeas Corpus in the above entitled matter and for ground of demurrer alleges:

I.

That said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus.

II.

That this court has no jurisdiction to entertain this petition.

FRANK M. SILVA,
United States Attorney;
WILFORD H. TULLY,
Assistant U. S. Attorney;
Attorneys for Respondent.

Service of a copy of the within demurrer, is admitted this —— day of July, 1920.

GEO. D. COLLINS, JR.,
Attorney for Petitioner.

[Endorsed:] Filed Jul. 31, 1920, W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

9 At a stated term of the District Court of the United States, for the Northern District of California, First Division,, held at the Court-room thereof, in the City and County of San Francisco, State of California, on the 4th day of August, in the year of our Lord, One Thousand, Nine Hundred and Twenty.

Present:

The Honorable Wm. H. Sawtelle, Judge.

No. 16893.

In the Matter of Roy Marshall on Habeas Corpus.

(*Minutes of Hearing on Demurrer, etc.*)

This matter came on regularly this day for hearing on order to show cause as to the issuance of a writ of habeas corpus herein, and Demurrer to Petition. Geo. D. Collins, Jr., was present as attorney for detained and petitioner. W. H. Tully, Esq., Asst. U. S. Atty., was present on behalf of respondent. Said matters were argued by the respective attorneys and ordered submitted.

10 At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the Court-room thereof, in the City and County of San Francisco, State of California, on the 9th day of August, in the year of our Lord, One Thousand, Nine Hundred and Twenty.

Present:

The Honorable Wm. H. Sawtelle, Judge.

No. 16893.

In the Matter of Roy Marshall on Habeas Corpus.

(*Order Sustaining Demurrer and Denying Writ.*)

The Court this day ordered that the Demurrer to the Petition for a Writ of Habeas Corpus heretofore submitted herein be and the same is hereby sustained and the said Petition for Writ be and the same is hereby denied, and that the petitioner and detained have and is hereby allowed an exception to the aforesaid order.

11 In the Southern Division of the District Court of the United States, in and for the Northern District of California, First Division.

(No. 16893.)

In the Matter of the Petition of G. D. COLLINS for the Writ of Habeas Corpus in Behalf of ROY MARSHALL.

Appeal to the Supreme Court of the United States.

The above named G. D. Collins and Roy Marshall conceiving themselves aggrieved by the final judgment made and entered in the above entitled matter by said United States District Court do hereby appeal from said judgment to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal be allowed and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, be sent to the Supreme Court of the United States on this appeal.

GEO. D. COLLINS, JR.,
Attorney for Appellants.

Dated this 9th day of August, 1920.

(*Order Allowing Appeal.*)

The foregoing appeal is allowed this 9th day of August, 1920.

FRANK H. RUDKIN,
United States District Judge.

(Endorsed:) Filed Aug. 10, 1920. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

12 In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

(No. 16893.)

In the Matter of the Petition of G. D. COLLINS for the Writ of Habeas Corpus in Behalf of ROY MARSHALL.

Assignment of Errors.

Comes now the petitioner in the above entitled matter and in connection with his appeal herein and upon his appeal he makes the following assignment of errors, viz:

1. The said District Court of the United States committed manifest error in sustaining the demurrer filed herein to the petition for the writ of habeas corpus.

2. That the said District Court of the United States has committed manifest error in denying said petition for the writ of habeas corpus herein.

3. That the said District Court of the United States committed manifest error in deciding herein that said Court had no jurisdiction to grant the said petition for the writ of habeas corpus.

4. That the said District Court of the United States committed manifest error in deciding herein that the matters set forth in said petition are insufficient to justify the issuance of the writ of habeas corpus.

5. That the said District Court of the United States committed manifest error in deciding that the imprisonment of said Roy Marshall is not in violation of the Constitution and laws of the United States, and especially the Fifth and Sixth Amendments to the
13 Constitution of the United States upon the facts averred in said petition for said writ of habeas corpus.

Whereas by the law of the land the said petitioner and said Roy Marshall were and are entitled to a judgment of said United States District Court in their favor; that said Court has jurisdiction of the matters set forth in said petition and that said matters are sufficient under the Constitution and laws of the United States to require the granting and issuance by said Court of the writ of habeas corpus as prayed for in said petition and that said demurrer to said petition should have been accordingly overruled by said Court and the writ of habeas corpus ordered to issue.

Wherefore the said petitioner and the said Roy Marshall pray that the final judgment of the said United States District Court in and for the Northern District of California, Southern Division, be reversed upon appeal herein and annulled.

GEO. D. COLLINS, JR.,
Attorney for Petitioner and the said Roy Marshall.

(Endorsed:) Filed Aug. 10, 1920. W. B. Maling Clerk, by C. W. Calbreath, Deputy Clerk.

14 *Certificate of Clerk U. S. District Court to Transcript on Appeal.*

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 13 pages, numbered from 1 to 13, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the Matter of Roy Marshall, on Habeas Corpus, No. 16893, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Præcipe for transcript on appeal (copy of which is embodied in this transcript), and the instructions of the attorney for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Five Dollars and Forty Five Cents ($5.45) and that the same has been paid to me by the attorney for the Appellant herein.

Annexed hereto is the original citation on appeal issued herein (page 15).

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 2nd day of October, A. D. 1920.

[Seal U. S. District Court, Northern Dist. California.]

WALTER B. MALING,
Clerk.

By C. M. TAYLOR,
Deputy Clerk.

15 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

Citation on Appeal.

To Colonel J. D. McDonald, Commandant of Disciplinary Barracks of the United States, Alcatraz Island, Northern District of California, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington, District of Columbia, on the 8th day of October, A. D. 1920, next, pursuant to an appeal filed in the clerk's office of the Southern Division of the United States District Court in and for the Northern District of California, Second Division, wherein G. D. Collins and Roy Marshall are the appellants and you are the appellee, to show cause if any there be why the final judgment rendered and entered in said United States District Court, against said appellant in the Matter of the Petition of G. D. Collins for the Writ of Habeas

Corpus in Behalf of Roy Marshall, as in said appeal specified, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank H. Rudkin, Judge of the Southern Division of the United States District Court, Northern District of California, Second Division, this the 9th day of August, A. D. 1920.

FRANK H. RUDKIN,
United States District Judge.

Due service of the foregoing citation is hereby accepted on behalf of the appellee this 10th day of August, 1920.

FRANK M. SILVA,
United States Attorney, Attorney for Appellee.

16 [Endorsed:] 16893. In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division. In the Matter of the Petition of G. D. Collins for the Writ of Habeas Corpus in Behalf of Roy Marshall. Citation on Appeal. Filed Aug. 10, 1920. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

Endorsed on cover: File No. 27,935. N. California D. C. U. S. Term No. 578. G. D. Collins and Roy Marshall, appellants, vs. Colonel J. D. McDonald, commandant of disciplinary barracks of the United States. Alcatraz Island, Northern District of California. Filed October 9th, 1920. File No. 27,935.

No. [redacted]150

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1920

G. D. COLLINS and ROY MARSHALL,
Appellants,

vs.

COLONEL J. D. MCDONALD, Commandant of Disciplinary Barracks of the United States, Alcatraz Island, Northern District of California,
Appellee.

BRIEF FOR APPELLANTS.

[redacted] D. COLLINS,
[redacted]
Counsel for Appellants.

Subject Index

List of Authorities Cited

No. 578

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1920

G. D. COLLINS and ROY MARSHALL,
Appellants,

vs.

COLONEL J. D. McDONALD, Commandant of Disciplinary Barracks of the United States, Alcatraz Island, Northern District of California,
Appellee.

BRIEF FOR APPELLANTS.

Statement of Case.

I.

This is an appeal from the final judgment of the Southern Division of the District Court of the United States, Northern District of California, denying a writ of *habeas corpus* for the release and discharge of the appellant Roy Marshall from the

custody and imprisonment maintained by the appellee Colonel J. D. McDonald, as commandant of the disciplinary barracks of the United States on Alcatraz Island, Northern District of California. The imprisonment is under and by virtue of a void judgment of a general *court-martial* of the army, convened February 11th, 1920, at Vladivostok, Siberia. A demurrer was interposed to the petition for *habeas corpus* upon the grounds, (1) that the petition does not state facts sufficient to entitle petitioner to the issuance of the writ and (2) that the United States District Court has no jurisdiction to entertain the petition. The court sustained the demurrer and denied the writ of *habeas corpus*. The appeal, as stated, is from this judgment denying the writ and is presented on the petition for the writ, the order sustaining the demurrer to the petition, the judgment and assignment of errors. The petition sets forth (1) that Roy Marshall is illegally imprisoned and restrained of his liberty at the disciplinary barracks on Alcatraz Island in the Northern District of California, Southern Division by Colonel J. D. McDonald, commandant of the barracks. (2) That the imprisonment is illegal in this that the same is under and by virtue of a void judgment of a general court-martial of the army theretofore, to wit: on the 11th day of February, 1920, convened at Vladivostok, Siberia, wherein and whereby the said void judgment, the said Roy Marshall was found guilty by said court-martial upon the following specifications, to wit:

"Specification 1. In that Private Roy W Marshall, company 'K', 31st Infantry, private Gerald E. Troxler, company 'K', 31st Infantry and private James F. Hyde, company 'K', 31st Infantry, acting jointly and in pursuance of a common intent, did, at Vladivostok, Siberia, on or about the 14th day of January, 1920, by putting him in fear, feloniously take from the presence of Van Fun Un, 40 Koreas Kaya street, Vladivostok, Siberia, the sum of about ten thousand roubles, value about fifty dollars.

"Specification 2. In that private Roy W. Marshall, company 'K,' 31st Infantry, private Gilbert Frey, company 'K,' 31st Infantry, private Gerald F. Troxler, company 'K', 31st Infantry, and private James F. Hyde, company 'K,' 31st Infantry, acting jointly and in pursuance of a common intent did at Vladivostok, Siberia, on or about the 16th day of January, 1920, by putting him in fear, feloniously take from the presence of Li Hun Yen, 24 Borodins Kays street, Vladivostok, Siberia, the sum of thirty thousand roubles, two gold rings, value about seven thousand roubles, one gold coin, value about ten roubles, of the total value of about thirty-eight thousand roubles, value about one hundred and ninety dollars.

"Specification 3. In that private Roy W. Marshall company 'K', 31st Infantry, private Gilbert Frey, company 'K', 31st Infantry, private Gerald E. Troxler, company 'K,' 31st Infantry and private James F. Hyde, company 'K,' 31st Infantry, did at Vladivostok, Siberia, on or about the 17th day of January, 1920, by putting him in fear, feloniously take from the presence of Mr. Ezdrisch, 165 Svetanskays street, Vladivostok, Siberia, the sum of about nine thousand roubles, value about forty-five dollars."

On these three specifications, the appellant Marshall was found guilty by the court-martial, and sentenced to imprisonment in the penitentiary at McNeil's Island for the period of ten years; he is now being held in custody by the appellee awaiting transportation to the penitentiary. The petition for the writ of *habeas corpus* further alleges that the judgment and sentence are void for the following reasons, to wit: (1) That the specifications charge no crime or offense known to the laws of the United States in that it does not appear therefrom that the property alleged to have been taken was not then and there the property of the accused. (2) That said property is not averred to have been in the care, possession, custody or control of the person from whose presence it is alleged to have been taken. (3) That the charge and specifications accuse said Roy Marshall, the said Frey, Troxler and Hyde with having jointly committed the acts therein averred. That such also are the findings and judgment of the court-martial. That the reviewing authority, to wit: the President of the United States has disapproved of said findings and judgment respecting said Troxler and Frey and Hyde, concerning said specification No. 1 and has disapproved of said findings and judgment respecting said Frey and Hyde, concerning said specification No. 2. That as the joint finding and judgment is not approved as against all the accused jointly, the same cannot be legally enforced against the said Roy Marshall as the accusation, verdict and

judgment against him are not several but joint. (4) That there was no evidence of guilt before the court-martial as against said Roy Marshall other than what purports to be his confession, made to and at the instance of his superior officers and under duress. That said alleged confession was taken under oath and said Marshall was thereby compelled to be a witness against himself in violation of the Fifth Amendment. That the said alleged confession was not shown before the court-martial to be free and voluntary and is uncorroborated. That the confession does not state that Roy Marshall took any money or property from any one by means of force or fear or otherwise.

II.

Questions Raised on Appeal.

1. Did the court-martial have *jurisdiction* of the subject-matter, to wit: the acts averred in the accusation? In other words do such acts constitute in law a violation of the *ninety-third* Article of War, which provides that any person subject to military law, who commits *robbery* or larceny shall be punished as a court-martial may direct.

2. Is the omission in the accusation, of facts or elements made essential by the statute in the definition of the offense, *jurisdictional defects,* the court being one of special and limited authority?

3. Is an accusation showing a *prima facie* violation of one or more of the Articles of War, a jurisdictional pre-requisite to the validity of a judgment of conviction by a court-martial?

4. Is a compulsory "confession" under oath, induced by appellant Marshall's superior officer, a violation of the Fifth Amendment?

5. Did the District Court commit manifest error in sustaining the demurrer to the petition and in denying the writ of *habeas corpus?*

III.

Specification of Errors.

The appellants contend that the District Court erred (1) in sustaining the demurrer to the petition; (2) in ruling that the petition does not state facts sufficient to entitle the petitioner to the issuance of the writ of *habeas corpus;* (3) in ruling that the court has no jurisdiction to entertain the petition; (4) in rendering judgment denying the writ of *habeas corpus.*

IV.

Brief of Argument.

A.

COURTS-MARTIAL ARE COURTS OF SPECIAL AND LIMITED JURISDICTION. A SUFFICIENT ACCUSATION ALLEGING FACTS SHOWING PRIMA FACIE A VIOLATION OF THE ARTICLES OF WAR IS A JURISDICTIONAL PREREQUISITE.

It is perfectly clear on principle and authority, that if the acts alleged in the specifications do not

constitute in law the crime of *robbery or larceny,* in other words do not constitute a violation of the ninety-third Article of War, then there existed no *jurisdiction* in the court-martial over the subject-matter, and its findings and judgment are void.

By the *twelfth* Article of War jurisdiction is given courts-martial

> "to try any person subject to military law for any crime or offense *made punishable by these articles.*"

And by the *thirty-seventh* Article of War, it is made a jurisdictional requirement

> "that the act or omission upon which the accused has been tried, constitute an offense denounced and made punishable by one or more of these articles".

It follows that a court-martial has no jurisdiction over any act or acts *not* denounced or made punishable by the Articles of War. A court-martial is a court of special and limited jurisdiction. Therefore its proceedings and judgment are void, if the matters stated in the accusation are insufficient in law to show *prima facie* a violation of one or more of the Articles of War.

> "The facts constituting the essential elements or ingredients of the offense should be sufficiently set forth, * * * not only to apprise the accused of the offense charged against him, but for the purpose of showing affirmatively, that the person mentioned in the charges *as well as the offense charged or alleged, is within the*

jurisdiction of the court convened for the trial of the case." (Italics ours.)

Davis on Military Law, (3d ed.), pg. 70;
Hamilton v. McClaughry, 136 Fed. 445.

We do not contend that the accusation to be sufficient, must have the technical nicety and precision of an indictment at common law, nor that an imperfect allegation of a material fact will be a *jurisdictional* defect. Our point is that the entire absence of an averment is an altogether different thing from an imperfect one or one deficient in matter of precision. The law demands an averment of all essential constituents of the offense sought to be charged to the extent at least that the accusation will respond to the requirements of the legal definition of the crime. A merely imperfect averment will not be the equivalent of no averment at all, if it be intelligible and indicate the fact it attempts to allege. As stated by Bishop:

> "Under every sort of constitution known among us, an indictment which does not substantially set down at least in general terms, all the elements of the offense,—every act or omission which the law has made essential to the punishment it imposes, *is void.*" (Italics ours.)
>
> 1 Bishop's New Crim. Proc., sec. 98a.

Say the Supreme Court:

> "No essential element of the crime can be omitted, without destroying the whole pleading."
>
> United States v. Hess, 124 U. S. 486.

To entirely omit from the accusation an averment of a fact essential to the existence of the offense, is undoubtedly, upon principle and authority, a *jurisdictional* defect, where the court is one of special and limited jurisdiction. The rule is otherwise, concerning courts of general jurisdiction. As recognizing the distinction, see:

Ex parte Watkins, 3 Peters 193, 209;
Cooper v. Reynolds, 10 Wall. 308;
Ex parte Lange, 18 Wall. 163;
Ex parte Parks, 93 U. S. 18;
In re Cuddy, 131 U. S. 284;
In re Bonner, 151 U. S. 256, 258, 262;
Matter of Gregory, 219 U. S. 210, 213;
Ex parte Greenall, 153 Cal. 767, 770, 771;
Matter of Ah Sam, 156 Cal. 349;
Ex parte Kearny, 55 Cal. 212;
Ex parte Smith, 135 Mo. 527;
Ex parte Neet, 157 Mo. 27;
People v. Langan, 196 N. Y. 260.

In accusations before courts-martial, the specifications must set forth

> "the acts or omissions of the accused which form the legal constituents of the offense. The pleading need not possess the technical nicety of indictments as at common law."
>
> Carter v. McClaughry, 183 U. S. 386.

It is one thing to omit entirely the averment of an essential fact and quite a different thing to plead it in substance but not with technical nicety or precision. It is in legal effect the difference exist-

ing between a general and a special demurrer. The accusation before a court-martial is sufficient if it plead, even imperfectly, every fact made essential by law in the definition of the offense; but if any such fact be entirely omitted, the defect is fatal to the jurisdiction.

1 Winthrop on Military Law, (2nd ed.), pg. 189, note 2;
Ex parte Greenall, 153 Cal. 767, 770, 771;
Ex parte Corryell, 22 Cal. 181;
Church on Habeas Corpus, sec. 245;
1 Bishop's New Crim. Proc., secs. 77, 79, 81, 86, 87, 88, 98a, 100a;
Fontana v. United States, 262 Fed. 283.

The omission of one essential fact is conclusive that the offense as defined by the statute, has not been committed, and therefore on the face of the accusation itself, the court-martial has *no jurisdiction* of the case. It is so held by all the authorities on the point.

Say the Supreme Court:

> "Undoubtedly courts-martial are tribunals of special and limited jurisdiction whose judgments, so far as questions relating to their jurisdiction are concerned, are always open to collateral attack. True, also, is it that in consequence of the limited nature of the power of such courts, *the right to have exerted their jurisdiction, when called in question by collateral attack, will be held not to have existed unless it appears that the grounds which were necessary to justify the exertion of the assailed authority, existed at the time of its exertion and*

therefore were or should have been a part of the record." (Italics ours.)

Givens v. Zerbst, 41 Supreme Court Reporter 229.

Citing:

Wise v. Withers, 3 Cranch 331;

Ex parte Watkins, 3 Peters 209;

Dynes v. Hoover, 20 How. 65;

Runkle v. United States, 122 U. S. 543, 555, 556;

McClaughry v. Deming, 186 U. S. 49, 62, 63, 68, 69.

To the same effect, see:

Hamilton v. McClaughry, 136 Fed. 445, 447, 448;

Davis on Military Law (3d. ed.), pg. 42, 69, 70.

Says Greenleaf:

"A court-martial is a court of limited and special jurisdiction. * * * The law presumes nothing in its favor. He who seeks to enforce its sentences or to justify his conduct under them, must set forth affirmatively and clearly all the facts which are necessary to show that it was legally constituted *and that the subject was within its jurisdiction.*" (Italics ours.)

3 Greenleaf on Evidence, sec. 470.

These authorities conclusively sustain the point we make that the judgment of a court-martial is void for want of jurisdiction over the subject matter, where the facts stated in the accusation do not

in law constitute a *prima facie* violation of one of the Articles of War. See, also, to the same effect:

1 Winthrop Military Law (2d ed.), pp. 188, 215, 216;

Davis on Military Law (3d ed.), 69, 70.

The question then is, does the accusation against the appellant Roy Marshall, state facts sufficient to constitute in law, the crime of robbery or larceny, and thereby show *prima facie* a violation of the ninety-third Article of War? This question, the determinative question in the case, we will now proceed to answer.

B.

ACCUSATION SHOWS NO VIOLATION OF ARTICLES OF WAR. THIS DEFECT JURISDICTIONAL.

The ninety-third Article of War makes robbery or larceny by a person in the military service, an offense within the jurisdiction of a court-martial. The article mentioned, does not define robbery or larceny and we therefore must ascertain its meaning by reference to the common law.

United States v. Palmer, 3 Wheat. 610, 630;
United States v. Outerbridge, 5 Sawy. 620;
United States v. Cardish, 143 Fed. 640;
In re Greene, 52 Fed. 100;
United States v. Armstrong, 2 Curtis 446;
United States v. Wilson, Baldw. 78.

According to the common law there can be no robbery or larceny unless the property taken was

the property of some one *other than the accused.* An accusation failing to so allege does not charge the crime of robbery nor the crime of larceny. So held in:

People v. Vice, 21 Cal. 344, per Field, C. J.;
People v. Shuler, 28 Cal. 490, 494;
People v. Hughes, 41 Cal. 234, 237;
People v. Ammerman, 118 Cal. 23, 25, 26;
People v. Cleary, 1 Cal. App. 50;
United States v. McNamara, 2 Cranch (C. C.) 45;
State v. Dengel, 24 Wash. 49;
McGinnis v. State, 16 Wyo. 72;
3 Bishop's New Crim. Proc., pg. 1868.

Such an accusation is a nullity.

United States v. Hess, 124 U. S. 486;
People v. Ammerman, 118 Cal. 23, 25, 26;
1 Bishop's New Crim. Proc., sec. 98a.

The accusation against the appellant Roy Marshall, merely charges that the property was *taken from the presence of another.* This may be true and yet Roy Marshall be the owner of the property and entitled to its possession at the time it was taken. Therefore such an averment of the mere presence of another, if not coupled with an allegation of ownership in the latter, is insufficient in law to sustain a charge of larceny, and insufficient to sustain a charge of robbery.

3 Bishop's New Crim. Proc., sec. 1006;
2 Bishop's New Crim. Law, secs. 1156, 1178;

2 Winthrop on Military Law (2d ed.), pg. 1050, 1063, 1064;
People v. Vice, 21 Cal. 344, per Field, C. J.
McGinniss v. State, 16 Wyo. 72;
State v. Dengel, 24 Wash. 49;
Breckenridge v. Com., 97 Ky. 267;
Houston v. Com., 87 Va. 257.

In other words there is an entire absence of essential averment, not merely an imperfect allegation.

Say the Supreme Court:

> "It must be made to appear—that is to say, appear from the indictment, without going further—that the acts charged will, if proved, support a conviction for the offense alleged."
>
> United States v. Cruikshank, 92 U. S. 557, 558, 559.

In the accusation against Roy Marshall, there is no averment that the property was the property of the person from whose presence it is alleged to have been taken, nor any averment indicating that the accused *was not* the owner and entitled to the possession of the property at the time it was taken by him. In the absence of such an averment, the law deems the appellant Marshall to be the owner of the property and entitled to its possession. Therefore his act of taking the property,—his own property, from the *presence* of another is not robbery and it is not larceny, but on the contrary is a perfectly lawful act. It is certainly no violation of the Articles of War. An accusation is fatally defective if it does not plead affirmatively facts sufficient to nega-

tive the presumption of innocence. If the facts alleged can be true and yet the accused be innocent in law, no crime is charged; in such a case there is no jurisdiction to adjudge a conviction, if the court be one of special and limited authority.

The citations we have given in this brief, conclusively support this decisive point. The Sixth Amendment to the Constitution of the United States in requiring that the accused be informed of the nature and cause of the accusation, necessarily demands that every essential ingredient in the law's definition of the offense be set forth in the accusation. If any one element be omitted, then to that extent the accused is not informed of the nature and cause of the accusation against him. The Sixth Amendment applies as much to an accusation before a court-martial as it does to an indictment.

3 Greenleaf on Evidence, sec. 10.

In other words, the Sixth Amendment makes void a conviction based upon an accusation omitting an essential ingredient or element of the offense as defined by law.

United States v. Cook, 17 Wall. 174.

The same conclusion results from the provision in the Fifth Amendment, requiring "due process of law".

Fontana v. United States, 262 Fed. 283;

1 Bishop's New Crim. Proc., secs. 77, 79, 81, 86, 87, 88, 98a, 100a.

The accusation against the appellant Roy Marshall charges no violation of the Articles of War, as it does not negative the fact, imputed by the presumption of innocence, that he was the owner and entitled to the possession of the property taken, at the time it was taken. Consistently with the averments in the accusation, the appellant Roy Marshall was the owner and entitled to the possession of the property; and the person from whose *presence* it is alleged to have been taken, was merely a by-stander having no interest in or claim to it.

As these facts are not negatived by the matters averred in the accusation, it results that neither robbery or larceny was committed. It is elementary law that the accused is entitled to have the accusation read and construed in accordance with the presumption of innocence, in the absence of averments rebutting the presumption.

Say the Supreme Court of Pennsylvania:

> "It is elementary law that in the spirit of that principle which presumes innocence until guilt is established, we infer that what is not charged in an indictment does not exist, and it is the business of the pleader to exclude by proper averments, the conclusions to which the accused is thus entitled."
>
> Mears v. Com., 2 Grant's Cas. 387;
>
> People v. Griffith, 122 Cal. 214.

There being no averment in the accusation against the appellant Roy Marshall, indicating that the property taken was not his property, or indicating

that the person from whose *presence* it was taken had some right, title or interest in it or claim to it, or that such person was anything more than a mere by-stander, there is neither robbery or larceny charged in the accusation, and therefore the court-martial had no jurisdiction of the subject-matter.

The court-martial derives its jurisdiction from statutory authority. The statutory provisions pertinent here are the *twelfth and ninety-third Articles of War,* making robbery or larceny by any person who is subject to military law, a matter within the jurisdiction of a court-martial. Now manifestly if the facts pleaded in the accusation do not present a case of robbery or larceny, the court-martial has no jurisdiction, as *article twelve and article thirty-seven,* explicitly limit the jurisdiction of the court-martial to crimes or offenses denounced and made punishable by the Articles of War. As the accusation against the appellant Roy Marshall does not state facts sufficient in law to constitute robbery or larceny (and this in the particulars we have pointed out in this brief), it necessarily follows that the court-martial had no jurisdiction to convict him of having violated the ninety-third Article of War. The judgment and sentence are therefore void. This conclusion is not only sustained by the principles of law to which we have referred, but also by the *thirty-seventh* Article of War which explicitly requires as a jurisdictional pre-requisite to the validity of the proceedings before the court-martial, that the act or omission upon which the accused has been

tried, constitute an offense denounced and made punishable by one or more of the Articles of War.

> "The court derives its jurisdiction from the law and its jurisdiction extends to such matters as the law declares criminal and none other, and when it undertakes to imprison for an offense to which no criminality attached, it acts beyond its jurisdiction."
>
> Ex parte Corryell, 22 Cal. 181.

This was said concerning the insufficiency of an accusation to bring the charge within the statutory definition of the offense.

Say the Supreme Court of the United States:

> "From a somewhat extended examination of the authorities in criminal cases, we will venture to state a rule applicable to all of them by which the jurisdiction as to any particular judgment of the court in such cases may be determined. It is plain that such court has jurisdiction to render a particular judgment only when the offense charged is within the class of offenses placed by the law under its jurisdiction. * * * To illustrate: In order that a court may take jurisdiction of a criminal case, the law must in the first instance authorize it to act upon a particular class of offenses within which the one presented is embraced. * * * Where the court has no right to take cognizance of the offense alleged, the prisoner must then be discharged on *habeas corpus.*"
>
> In re Bonner, 151 U. S. 256, 258, 262.

The point we make is not one relating to the insufficiency of the *evidence or of the facts in evidence* to establish the charge adequately alleged in the accusation, as in *Swain v. United States*, 165 U. S.

553, and *Johnson v. Sayre,* 158 U. S. 109; but the point we urge is that a court-martial being a court of special and limited authority has no jurisdiction of an accusation setting forth or alleging acts *that do not* constitute a violation of one or more of the Articles of War. As the accusation against the appellant Roy Marshall does not allege facts constituting an offense denounced and made punishable by the ninety-third, nor by any other Article of War, the court-martial had no jurisdiction to render judgment of conviction against him. *The case presented is in law precisely the same as if the accusation alleged affirmatively that the appellant Roy Marshall was the owner and entitled to the possession of the property taken at the time it was taken, and that the persons named, from whose presence the property was taken by putting them in fear, were merely bystanders having no interest whatever in or claim to the property.* Manifestly the court-martial would have no jurisdiction over such an accusation, as it would not show a violation of any one or more of the Articles of War. The use of the word "feloniously" in the accusation, would not be sufficient to show robbery or larceny, it being at best but a conclusion of law, and pertaining only to the intent. It would not suffice in itself to dispense with an allegation showing that the property taken was not the property of the accused (so held in *McGinnis v. State,* 16 Wyo. 72); or an allegation that the property was the property of the person from whose *presence* it is averred to have been

taken or an allegation that it was in his custody, possession, or control, at the time it was taken. As sustaining these views, see:

People v. Vice, 21 Cal. 344, per Field, C. J.;
People v. Shuler, 28 Cal. 490, 494;
People v. Hughes, 41 Cal. 234, 237;
People v. Ammerman, 118 Cal. 23, 25, 26;
People v. Cleary, 1 Cal. App. 50;
United States v. McNamara, 2 Cranch (C. C.) 45;
McGinnis v. State, 16 Wyo. 72;
3 Bishop's New Crim. Proc., pg. 1868.

Both robbery and larceny involve the element of trespass and the accusation must aver facts showing that the property was taken from another. This is elementary law.

3 Bishop's New Crim. Proc., sec. 1006.

The word "feloniously" in connection with the word "take" does not import a taking from another, nor a taking from the owner.

So held in:

McGinniss v. State, 16 Wyo. 72.

In proceedings before courts-martial, the *specifications* must set forth facts sufficient to constitute a violation of the Articles of War.

Davis on Military Law (3d ed.), pg. 69, 70;
1 Winthrop Military Law (2d ed.), pg. 188, 215, 216.

An accusation for robbery or larceny is fatally defective and charges no crime if it omits an allega-

tion of ownership of the property taken or omits an allegation showing that the property was taken from some one. Merely alleging a taking from his *presence*, there being no averment that he is the owner or that he had the custody, possession or control of the property at the time of the taking, will not be sufficient. It is so held by the authorities we have cited.

It is perfectly manifest that whether the court-martial convicted the accused upon a plea of guilty, or as here, upon a plea of not guilty, the conviction would necessarily be limited to the averments of the accusation. The conviction in either case would mean no more than "guilty *as charged*".

Say the Supreme Court:

> "It must be made to appear—that is to say, appear from the indictment, without going further—that the acts charged will, if proved, support a conviction for the offense alleged."
>
> United States v. Cruikshank, 92 U. S. 559.

Therefore if the facts alleged in the accusation do not constitute in law a violation of the Articles of War, the conviction is null and void for the self-evident reason that the accused has not been convicted of a violation of the Articles of War. Clearly in such a case, the court-martial would transcend its jurisdiction in convicting him. Having no jurisdiction of the charge as laid in the accusation, the court-martial would only have power to dismiss the proceedings, or as said by Winthrop, *to strike out the charge.*

No amount of evidence that went beyond the scope of the averments in the accusation, could by any possibility sustain a conviction, for this would be to convict without accusation, in violation of the Sixth Amendment to the Constitution of the United States.

C.

ENFORCED CONFESSION UNDER OATH IS VIOLATION OF FIFTH AMENDMENT.

The Fifth Amendment to the Constitution of the United States, explicitly provides that no person shall be compelled in any criminal case to be a witness against himself; yet this very thing was done when the appellant Roy Marshall was required by his superior officer to make a confession of guilt and to make it under oath.

The expression of a wish by a superior officer to a private, would be equivalent to a command. A confession made under oath is presumptively a confession under duress.

2 Wharton's Crim. Evidence, sec. 668 (10th ed.).

See, also:

Rex v. Partridge, 7 C. & P. 551;
Reg v. Bate, 11 Cox C. C. 686;
Reg v. Rose, 18 Cox C. C. 717;
Com. v. Meyers, 160 Mass. 530.

The two factors existing in the case, to wit: (1) statements under oath, resulting from admonition

recommending confession, and (2), confession at instance of superior officer, are sufficient to establish compulsory self-incrimination.

D.

HABEAS CORPUS THE PROPER REMEDY.

The District Court from whose judgment this appeal is taken, did not file an opinion in the case; but the court held that the accusation did not charge either robbery or larceny, nor any other violation of the Articles of War. The court however very erroneously ruled that the insufficiency of the accusation to charge an offense, is not a jurisdictional defect, and that therefore it does not entitle the prisoner to the writ of *habeas corpus*. We have cited in this brief the authorities fully sustaining our contention that an accusation stating facts sufficient to constitute a violation of one or more of the Articles of War, is a jurisdictional prerequisite to the validity of a judgment of conviction by a court-martial; and we have also pointed out that the rule applied by the District Court has reference only to the proceedings and judgments of courts of general jurisdiction. The law is otherwise concerning courts of special and limited jurisdiction, such as courts-martial, and makes it *a jurisdictional* requirement that the accusation state facts sufficient to constitute in law, a violation of the Articles of War.

Ex parte Watkins, 3 Peters 209;

Given v. Zerbst, 41 Supreme Ct. Rep. 229;

In re Bonner, 151 U. S. 256, 258, 262;
Ex parte Lange, 18 Wall. 163;
Ex parte Greenall, 153 Cal. 767, 770, 771;
Matter of Ah Sam, 156 Cal. 349;
Ex parte Smith, 135 Mo. 223;
Ex parte Neet, 157 Mo. 527;
People v. Langan, 196 N. Y. 260.

Therefore in a case where the accusation is so fatally defective in essential averment that it entirely fails to show the commission of an offense denounced and made punishable by the Articles of War, a judgment of conviction rendered by a court-martial against the accused, is absolutely null and void for want of jurisdiction over the subject-matter. Imprisonment under such void judgment is illegal; it is in violation of the Constitution and laws of the United States, and the prisoner will be discharged on *habeas corpus*. On the point that the alleged "confession" is compulsory self-incrimination in violation of the Fifth Amendment, the District Court expressed no opinion, but denied the writ on the theory that it is not the proper remedy in such cases. The contrary was held in the Nielsen case, 131 U. S. 176.

V.

CONCLUSION.

In this brief we have established the point that the Sixth Amendment to the Constitution of the United States in requiring that the accused be in-

formed of the nature and cause of the accusation, requires that he be informed of every essential element constituting the offense. If one element be omitted, the accusation is in violation of the Sixth Amendment, for to that extent he is not informed of the nature and cause of the accusation against him. There is no practical significance in the Sixth Amendment unless it means at least this much and secures to the accused the legal right to an accusation setting forth every essential ingredient of the offense, as it is defined by law. A person imprisoned in violation of the Constitution, is entitled to his discharge on *habeas corpus*. So held in the case of Nielsen, 131 U. S. 176. In this brief we have established the point that the accusation against the appellant Roy Marshall is fatally defective in the entire omission of an essential averment respecting one of the elements necessary to constitute an offense violative of the ninety-third Article of War. We have established the point that a court-martial being a tribunal of special and limited jurisdiction, the accusation must affirmatively charge an offense over which the court is given by statute, to wit: the Articles of War, the power to adjudicate and punish. We have established on common law principles, the point that if the accusation is so fatally defective, it entirely omits to aver an essential fact or element contained in the legal definition of the offense, then the court-martial has no jurisdiction of the subject-matter; has no more jurisdiction than if the accusation had set forth facts

showing conclusively the innocence of the accused; for instance in our case, as if the accusation had affirmatively alleged that the defendant Roy Marshall was the owner and entitled to the possession of the property taken, at the time it was taken, and that the persons from whose *presence* it was taken, were merely by-standers having no interest in it and no claim to it. These facts are, as a matter of law and by necessary implication, read into the accusation, pursuant to the legal, the fundamental presumption of innocence, inherent in our system of criminal law, there being no averment, not even an imperfect averment to negative the exculpatory facts we have stated. In other words, it is elementary doctrine that it is the function and province of the accusation to negative the presumption of innocence; and if this is not done, at least in legal effect, in the averments of the charge, the presumption of innocence prevails, and the court-martial has no *jurisdiction* of the case, as the jurisdiction is limited by the law, to offenses violative of one or more of the Articles of War. Hence the *jurisdictional* necessity of the accusation containing averments, either perfect or imperfect, indicating the commission of such an offense; for this purpose, all the essential ingredients of the offense, contained in the law's definition of it, must be pleaded in the accusation, or there is no jurisdiction in the court martial over the subject-matter. The averments of the accusation need not have the technical nicety or precision of a good common-law

indictment, but are sufficient to present a case within the jurisdiction of the court-martial, if they intelligibly though imperfectly indicate the existence of every essential element constituting the complete offense and thus show *prima facie* a violation of one or more of the Articles of War. We have in this brief established the point that in the accusation against the appellant Roy Marshall, there is an entire absence of essential averment, and that by reason of this ommission, no offense violative of the Articles of War, is charged against him. From this it follows, that the court-martial had no jurisdiction of the subject-matter; its proceedings and judgment are therefore void; being void, the imprisonment is illegal and the writ of *habeas corpus* is the proper remedy. We have also established in this brief, the point that on constitutional grounds, *and also irrespective of these,* upon principles of the common law, the court-martial had no jurisdiction of the subject-matter, in that the accusation does not state facts sufficient to constitute in law a *prima facie* violation of the ninety-third Article of War. We have established in this brief the point that the accused was compelled to be a witness against himself and that this compulsory self-incrimination contravenes the Fifth Amendment; further, that in such cases, *habeas corpus* is the proper remedy.

It is accordingly respectfully submitted the law requires the judgment of the United States District Court, denying the writ of *habeas corpus,* to be RE-

VERSED, with direction to overrule the demurrer and grant the writ as prayed for in the petition; to then proceed in conformity with law and discharge the appellant Roy Marshall from the imprisonment. He has been most unfortunate. Animated by exalted patriotic impulse as a loyal natural born citizen of the United States, enlisting in her army in time of war, ready to give the last full measure of devotion to her glorious flag, by sacrifice of his life, if need be, in fighting for the cause of civilization and humanity, he with his company sent to Siberia against the enemy, is while there, and absent on leave, arrested upon an unfounded charge of robbery, has his eye shot out by the arresting officer, the result of the latter's carelessness, is wrongly convicted by court-martial upon a "confession" his mental condition due to the shooting, did not and could not comprehend, a "confession" actually forced upon him by his superior officer, and defective in essential incriminating facts; surely there can be no reluctance by the Department of Justice in concurring in the effort now being made on this appeal to secure for him the liberty to which the law clearly entitles him. We are aware there can be no review on *habeas corpus* of the evidence before the court-martial, but we have the right to show upon the writ, and we have shown in this brief, that the court-martial had *no jurisdiction* of the subject-matter, in that the facts averred in the accusation are not sufficient in law to constitute a violation of the Articles of War; and further, that in convicting the

accused upon a so-called "confession" in the nature of compulsory self-incrimination by him, the court-martial again transcended the well-defined limits of its authority. Nothing is more elementary in the law than the doctrine that where a person is deprived of his liberty upon a judgment of conviction, void for want of jurisdiction in the court rendering it, the writ of *habeas corpus* is the proper and only remedy for his release from the unlawful imprisonment.

Dated, San Francisco,
September 21, 1921.

Respectfully submitted,
GEORGE D. COLLINS,
Counsel for Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

G. D. COLLINS AND ROY MARSHALL, appellants,
v.
COLONEL J. D. McDONALD, COMMANDANT of Disciplinary Barracks of the United States, Alcatraz Island, Northern District of California. } No. 150.

APPEAL FROM UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA.

STATEMENT AND ARGUMENT FOR APPELLEE.

STATEMENT.

The appeal is from an order denying a petition for a writ of *habeas corpus* and sustaining a demurrer thereto.

Appellant Marshall was found guilty of violating article 93 of the Articles of War by a general court-martial of the United States Army convened at Vladivostok, Siberia, on February 11, 1920, and sentenced to ten years' imprisonment at McNeils Island. While awaiting transportation to prison he was held at the Disciplinary Barracks.

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The sole basis for the petition and the appeal are the three specifications on which Marshall was tried and found guilty. The specifications set forth that Privates Roy W. Marshall, Gilbert Frey, Gerald E. Troxler, and James F. Hyde, all of Company K, 31st Infantry, "acting jointly and in pursuance of a common intent, did, at Vladivostok, Siberia, * * * by putting him in fear, feloniously take from the presence of" Van-Fun-Un, 40 Koreaskays Street, on or about January 14, 1920, about 10,000 roubles, value about $50 (No. 1); Li-Hun-Yen, 24 Borodinskays Street, on or about January 16, 1920, 30,000 roubles, 2 gold rings, value about 7,000 roubles, 1 gold coin, value about 1,000 roubles, total value about 38,000 roubles, value about $190 (No. 2); Mr. Ezdrisch, 165 Svetlanskays Street, on or about January 17, 1920, about 9,000 roubles, value about $45 (No. 3).

Without any allegation that the matter set forth in the petition is *all* that was contained in the charge and specifications, or that the general court-martial was not regularly convened, or that its proceedings were not in all respects regular; and without any attempt to bring before the court the findings of the general court-martial, or the record of the evidence and proceedings or any part thereof before it, the petitioner contented himself with the general allegations that the general court-martial had no jurisdiction to impose the sentence, for the alleged reasons that (*a*) the specifications charged no offense against the laws of the United States, as it did not appear

that the roubles, gold rings, and the gold coin were not the property of the accused; (*b*) the specifications did not aver that the roubles, gold rings, and the gold coin were in the care, possession, custody, or control of Van-Fun-Un, Li-Hun-Yen, or Ezdrisch; (*c*) the specifications accused Marshall, Frey, Troxler, and Hyde with having jointly committed the acts and that such was the finding of the general court-martial, and as the President disapproved of the findings under specification 1 with respect to Troxler, Frey, and Hyde, and under specification 2 with respect to Frey and Hyde, and did not approve the findings as to all jointly, none could stand as against Marshall; (*d*) that there was no evidence of the guilt of Marshall other than what purports to be his confession made under duress.

The alleged disapproval by the President of the findings against Frey, Troxler, and Hyde under specification 1, and against Frey and Hyde under specification 2, is not in the record and there is nothing to show the nature of such disapproval. So also with respect to the confession and the alleged duress.

It is not claimed that Marshall or his counsel were denied access to any part of the record of the evidence and proceedings before the general court-martial, or to the confession, if in writing, or that they ever called for them before or during the hearing before the district court, or that the same were not at all times available to them.

ARGUMENT.

The several alleged reasons given for lack of jurisdiction of the general court-martial have been argued by learned counsel in an elaborate brief.

Article 93 of the Articles of War reads:

> Any person subject to military law who commits manslaughter, mayhem, arson, burglary, robbery, larceny, embezzlement, perjury, assault with intent to commit any felony, or assault with intent to do bodily harm, shall be punished as a court-martial may direct.

In "A Manual for Courts-Martial," revised in the Judge Advocate General's Office and published by authority of the Secretary of War, in force and effect on and after March 1, 1917, under the title "Definition,s" it is provided (par. 61, p. 31):

> A charge corresponds to a civil indictment. It consists of two parts—the technical "*charge*," which should designate the alleged crime or offense as a violation of a particular article of war or other statute, and the "*specification*," which sets forth the facts constituting the same. The requisite of a *charge* is that it shall be laid under the proper article of war *or other statute;* of a *specification* that it shall set forth in simple and concise language facts sufficient to constitute the particular offense and in such manner as to enable a person of common understanding to know what is intended. * * *

In the Manual, under the title "Rules to be Observed in Pleading," it is provided (par. 74, p. 36):

> (*b*) *Statement of specification.*—The specification need not possess the technical nicety of

an indictment. In general a bald statement of the facts in simple and concise language, and in such a manner as to enable a person of common understanding to know what is intended is sufficient, provided the offense itself be distinctly and accurately described. More specifically, (1) the name, rank, title, and organization of the accused person, if he belongs to the Army of the United States, should be stated, or if he is a civilian he should be so described that it appears he is a person subject to military law, or by statute or the law of war is subject to trial by military tribunals; (2) the facts that constitute the offense charged will be set out briefly but clearly, together with the place and time of commission. Care should be taken that all the elements of the offense as denounced in the article of war or other statute are set forth. The specification must be appropriate to the charge. (See Winthrop, p. 189, and authorities there cited.)

In the Manual, under the title "Charge: Violation of the 93d Article of War," the following form of specification is prescribed (page 346):

> 102. *Specification.*—In that ——— did, at ———, on or about the —— day of ———, 19—, by (force and violence) (putting him in fear) feloniously take from the (person) (presence) of ———, ———, value about $——.

In the Manual, under the title "Joint charges," it is provided (par. 69, p. 34):

> Where two or more persons jointly and in pursuance of a common intent commit a crime

> or offense which can be committed by a combination of persons acting in concert, they may be separately charged and tried for such crime or offense or may be jointly charged and jointly tried. The actual presence of all of the accused persons at the actual commission of the offense is not necessary, for all who take part in the enterprise are equally guilty, though they may be absent from the place of actual commission of the offense with which they are charged. The fact that justice may require that different degrees of punishment be awarded to the different parties constitutes no objection to such a joint prosecution. The mere fact of their committing the same offense together and at the same time, although material as going to show concert, does not necessarily establish it. Thus the fact that several soldiers have absented themselves together without leave will not, in the absence of evidence indicating a concert of action, justify their being arraigned together on a joint charge, for they may merely have been availing themselves of the same convenient opportunity of leaving.

Marshall does not allege that he was not a private in Company K, 31st Infantry, or that he was not in the military service, or that the general court-martial at Vladivostok had no *power* to try, convict, and sentence him, or that he was denied competent counsel adequately to present his defense or the right to produce and examine witnesses. His sole claim, made long after trial and while he was in the barracks awaiting transportation to prison, appears

to be that alleged *inadequate specifications* defeat the jurisdiction of the court-martial and render its judgment void, and that, after trial and sentence, the unexhibited disapproval by the President of the findings against the other privates under specification 1 renders the sentence void as to Marshall under all specifications.

1. The district court may not review mere alleged errors in the court-martial proceedings.

In *In re Grimley, Petitioner*, 137 U. S. 147, 150, 153, this court, speaking through Mr. Justice Brewer, said:

> It can not be doubted that the civil courts may in any case inquire into the jurisdiction of a court-martial, and if it appears that the party condemned was not amenable to its jurisdiction, may discharge him from the sentence. And, on the other hand, it is equally clear that by *habeas corpus* the civil courts exercise no supervisory or correcting power over the proceedings of a court-martial, and that no mere errors in their proceedings are open to consideration. The single inquiry, the test, is jurisdiction. That being established, the *habeas corpus* must be denied and the petitioner remanded. That wanting, it must be sustained and the petitioner discharged.
>
> * * * * *
>
> While our Regular Army is small compared with those of European nations, yet its vigor and efficiency are equally important. An army is not a deliberative body. It is the executive arm. Its law is that of obedience. No question can be left open as to the right

> to command in the officer or the duty of obedience in the soldier. Vigor and efficiency on the part of the officer and confidence among the soldiers in one another are impaired if any question be left open as to their attitude to each other. So, unless there be in the nature of things some inherent vice in the existence of the relation, or natural wrong in the manner in which it was established, public policy requires that it should not be disturbed.

2. The alleged inadequacy of the specifications was not raised before the court-martial and may not be raised after sentence on *habeas corpus* proceedings.

In *Connors* v. *United States*, 158 U. S. 408, 410, this court, speaking through Mr. Justice Harlan, said:

> Undoubtedly, it was in the discretion of the court to compel the prosecutor to state whether he would proceed against the accused for having himself seized, carried away, and secreted the ballot box, or for having assisted or procured others to do so. But there was no motion to require the prosecutor to make such a statement. If the objection now urged could have been taken by motion to quash the indictment, it is sufficient to say that although the record shows that there was such a motion, the grounds of it are not stated. So far as the record discloses, the specific objection now urged was made for the first time after verdict by a motion in arrest of judgment. But such an objection, not made until after verdict, would not justify an arrest

> of judgment, and is not available on writ of error. 1 Bish. Crim. Pro., secs. 442, 443; Wharton's Crim. Pl. & Pr., sec. 255. Nor, if made by demurrer or by motion and overruled, would it avail on error unless it appeared that the substantial rights of the accused were prejudiced by the refusal of the court to require a more restricted or specific statement of the particular mode in which the offence charged was committed. Rev. Stat., sec. 1025. There is no ground whatever to suppose that the accused was taken by surprise in the progress of the trial, or that he was in doubt as to what was the precise offence with which he was charged.

3. The alleged disapproval by the President of certain findings as to privates other than Marshall was subsequent to conviction and has no relation whatever to the jurisdiction of the court-martial over Marshall. On two specifications the findings were approved as against Marshall and others and the sentence was not excessive even for a single specification.

In *Harvey* v. *United States*, 159 Fed. Rep. 419, 420, Circuit Judge Buffington (with whom concurred Circuit Judges Dallas and Gray) said:

> Now when a sentence is imposed generally and without application to any special count, and any particular count warrants such sentence, the sentence is applied to such warranting count. Thus in *Evans* v. *United States*, 153 U. S. 608, it is said:

> "As the verdict was rendered upon all the counts, and the sentence did not exceed that which might properly have been imposed upon conviction under any single count, such sentence is good, if any such count is found sufficient."
>
> This was but a restatement by the Supreme Court of the law as laid down in its earlier case of *Claassen* v. *United States*, 142 U. S. 140, and followed in its later case of *Goode* v. *United States*, 159 U. S. 663.

No questions are raised here such as were raised but without success in *Givens* v. *Zerbst, Warden*, 255 U. S. 11, i. e., alleged illegality of the court because of want of *power* in the officer by whom it was called to convene; the failure of the record to show that the accused was an officer in the Army or was in any way amenable to trial by court-martial, and that, in any event, the court had no power to try a charge of murder committed within the United States in time of peace, there being no averment negativing a time of peace; and the asserted unlawfulness of the confinement of the petitioner in the Atlanta Penitentiary because the record failed to establish that that place had been designated by the President; or, as the somewhat similar questions raised but again without success in *Kahn* v. *Anderson, Warden*, 255 U. S. 1.

Alleged inadequacy of specifications, disapproval by the President of the findings under two of the specifications as to certain of the other privates, and alleged confession under duress even if proved or exhibited, are all beside the point, as none of them

raises the question of jurisdiction of the court-martial. The petition for the writ is singularly barren of any circumstance which would even tend to indicate that the court-martial was without jurisdiction.

Either the appeal should be dismissed or the judgment of the district court sustaining the demurrer and dismissing the petition should be affirmed.

JAMES M. BECK,
Solicitor General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

FEBRUARY, 1922.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1921

G. D. COLLINS and ROY MARSHALL,
APPELLANTS.

vs.

COLONEL J. D. McDONALD, Commandant of Disciplinary Barracks of the United States, Alcatraz Island, Northern District of California,
APPELLEE.

No. 150

REPLY ARGUMENT FOR APPELLANTS.

The principal contention of appellants, that the accusation does not in the matters therein pleaded show a violation of the ninety-third article, nor of any other provision of the Articles of War, is not disputed by counsel for the Government in their printed argument. The authorities cited on the point at pages 12, 13 and 14 of appellants' brief are conclusive that neither robbery or larceny is alleged; therefore no offense against

the Articles of War is pleaded or shown by the accusation. THE QUESTION, THEN, IS WHETHER AN ACCUSATION MADE TO A COURT-MARTIAL, SHOWING NO VIOLATION OF THE ARTICLES OF WAR, IS A JURISDICTIONAL DEFECT, RENDERING VOID THE CONVICTION AND SENTENCE.

> "The single inquiry, the test, is jurisdiction. That being established, the *habeas corpus* must be denied and the petitioner remanded. That wanting, it must be sustained and the petitioner discharged."
>
> In re Grimley, 137 U. S. 147, 150.

This was said by the Supreme Court concerning a conviction and sentence by court-martial and the remedy by *habeas corpus* in such cases.

Now manifestly, if the accusation fails to show a violation of the Articles of War there is *no jurisdiction in the court-martial over the subject-matter.* The thirty-seventh article of war explicitly makes it a jurisdictional pre-requisite

> "that the act or omission upon which the accused has been tried constitute an offense denounced and made punishable by one or more of these articles."

Therefore, if no such offense is stated in the accusation as limited by the specifications, *no jurisdiction exists.* So, too, it is well-settled law that a court-martial, being a court of inferior and limited authority, is without jurisdiction of the subject-matter if the accusation fails to show a violation of the Articles of War.

> Ex parte Watkins, 3 Peters 193, 209, per Marshall, C. J.

To the same effect are the many authorities cited on pages 8, 9, 10, 11 and 12 of appellants' brief.

As the failure of the accusation to show *prima facie* a violation of the Articles of War is a JURISDICTIONAL DEFECT, therefore rendering void the judgment and sentence, it must and does follow that *habeas corpus* is the proper remedy to deliver the appellant Marshall from the resulting unlawful imprisonment.

A word as to the authorities cited by the counsel for the Government: In the case of *Grimley*, 137 U. S. 147, 150, 153, the court, while correctly stating the elementary rule that mere errors in the exercise of a conceded jurisdiction are not sufficient to sustain *habeas corpus*, held that yet, where there is no jurisdiction, the writ is the proper remedy against the unlawful imprisonment. The point we make is that the accusation against appellant Marshall is fatally defective because of the absence of essential averments to show a violation of the Articles of War, not that essential matters are imperfectly alleged. Were the latter the case, *habeas corpus* would not be the proper remedy; but there being an entire absence of essential averment, no offense against the Articles of War is alleged; and therefore the court-martial being a court of special and limited authority, had no JURISDICTION of the subject-matter; therefore *habeas corpus* is the proper remedy to deliver the appellant Marshall from the resulting unlawful imprisonment.

In the case of *Connors v. United States*, 158 U. S. 408, 410, the decision is that after verdict a defect not going to the essence of the charge and not available

on motion in arrest of judgment nor on writ of error, will not warrant a reversal of the judgment. Manifestly this can have no application to a case where the accusation is so defective because of the absence of essential averments that it entirely fails to show a violation of law, and therefore charges no crime.

In the case of *Harvey v. United States*, 159 Fed. Rep. 419, 420, it is merely held that one good count will sustain a conviction and sentence. This has no application to the objection that the accusation made to the court-martial in the instant case entirely fails to show a violation of the Articles of War.

The case of *Givens v. Zerbst*, 255 U. S. 11, sustains the contention we make that a failure to set forth in the accusation facts sufficient to show *prima facie* a violation of the Articles of War, is a jurisdictional defect. We have quoted in italics on pages 10 and 11 of appellants' brief the portion of the decision sustaining the point.

The case of *Kahn v. Anderson*, 255 U. S. 1, has no application to any one of the points we present.

The quotations made in the printed argument of counsel for the Government from the "Manual for Courts-Martial" require the accusation to

> "set forth in simple and concise language facts sufficient to constitute the particular offense."

Again:

> "Care should be taken that all the elements of the offense as denounced in the article of war or other statute are set forth."

THE PETITION FOR THE WRIT OF HABEAS CORPUS SETS FORTH THE SPECIFICATIONS OF THE CHARGE ON WHICH THE APPELLANT MARSHALL WAS FOUND GUILTY AND SENTENCED TO IMPRISONMENT FOR A TERM OF TEN YEARS, AND ALLEGES THAT THEY ARE THE SPECIFICATIONS ON WHICH THE CONVICTION AND SENTENCE ARE BASED. (Rec. pp. 2 and 3.)

This is amply sufficient to show that the conviction and sentence rest on the specifications pleaded. A negative averment that

> "the matter set forth in the petition is *all* that was contained in the charge and specifications"

would manifestly be superfluous and bad pleading, to say the least. It is only required that the petition present a *prima facie* case for the issuance of the writ. If there is anything omitted that would be a defense, it should and can be pleaded in the return to the writ. The District Court had no difficulty in understanding the petition as adequately setting forth the facts, and duly issued its rule *nisi*, but while holding the defects assigned to be such, decided that they were non-jurisdictional and therefore not available on *habeas corpus*. In this the court certainly erred, as the authorities cited in the appellants' brief clearly prove. It is therefore we contend that the judgment appealed from should be *reversed*.

Dated, San Francisco,
March 6, 1922.

Respectfully submitted,

GEORGE D. COLLINS,
Counsel for Appellants.

COLLINS ET AL. *v.* McDONALD, COMMANDANT OF DISCIPLINARY BARRACKS OF THE UNITED STATES, ALCATRAZ ISLAND, NORTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 150. Submitted March 2, 1922.—Decided April 10, 1922.

1. In a proceeding in *habeas corpus* on behalf of a person imprisoned under sentence of a court-martial, the inquiry must be limited to the jurisdiction of the court-martial over the offense charged and the punishment inflicted. P. 418.
2. To sustain the jurisdiction of a court-martial in a collateral attack by *habeas corpus*, the facts essential to its existence must appear. P. 418.
3. Taking property "from the presence of" another feloniously and by putting him in fear is equivalent to taking it from his personal protection, and is, in law, a taking from the person—a robbery, as defined by § 284 of the Criminal Code. P. 419.

4. It is not necessary that a charge in court-martial proceedings should be framed with the technical precision of a common-law indictment. P. 420.
5. In *habeas corpus*, objections to a court-martial trial which are mere conclusions not supported by the record, or concern merely errors in the admission of testimony, cannot be considered. P. 420.

Affirmed.

APPEAL from an order of the District Court sustaining a demurrer to a petition for *habeas corpus* and refusing the writ.

Mr. George D. Collins for appellants.

Mr. Solicitor General Beck and *Mr. Blackburn Esterline*, Special Assistant to the Attorney General, for appellee.

MR. JUSTICE CLARKE delivered the opinion of the court.

In February, 1920, Roy Marshall, a private in the United States Army, serving at Vladivostok, Siberia, was tried for robbery by a court martial there convened, was found guilty and was sentenced to imprisonment in the penitentiary at McNeil's Island.

Five months later, when Marshall was at the Disciplinary Barracks on Alcatraz Island, awaiting transportation to McNeil's Island, a petition for a writ of *habeas corpus* was filed in his behalf by his attorney, G. D. Collins, in the District Court for the Northern District of California.

In response to a rule to show cause why the writ should not be issued, Colonel J. D. McDonald, Commandant of the Disciplinary Barracks, filed a demurrer to the petition on two grounds: (1) That the petition did not state facts sufficient to entitle petitioner to the writ, and (2) That the court did not have jurisdiction to entertain the petition.

This demurrer was sustained, without opinion, and the case is here for review on direct appeal from the District Court, based on sufficient constitutional grounds.

If the District Court had issued the writ as prayed for, the only questions it would have been competent for it to hear and determine would have been, "Did the court martial which tried and condemned the prisoner have jurisdiction, of his person, and of the offense charged, and was the sentence imposed within the scope of its lawful powers?" "The single inquiry, the test, is jurisdiction. That being established, the *habeas corpus* must be denied and the petitioner remanded. That wanting, it must be sustained and the petitioner discharged." *In re Grimley*, 137 U. S. 147, 150; *Johnson* v. *Sayre*, 158 U. S. 109, 118; *Carter* v. *McClaughry*, 183 U. S. 365, 368; *Mullan* v. *United States*, 212 U. S. 516, 520; *Ex parte Reed*, 100 U. S. 13, 23. But, the court martial being a special statutory tribunal, with limited powers, its judgment is open to collateral attack, and unless facts essential to sustain its jurisdiction appear, it must be held not to exist. *McClaughry* v. *Deming*, 186 U. S. 49, 62, 63; *Givens* v. *Zerbst*, 255 U. S. 11, 19.

Thus, the question for decision here is, Does the petition show want of jurisdiction in the court martial over the person of the accused and over the offense with which he was charged and for which he was sentenced?

Neither the constitution, the convening, nor the regularity of the proceedings, of the court martial in this case, is assailed, and that the prisoner was a private in the Army of the United States is admitted. The only allegation in the petition of sufficient substance to deserve notice is, that the judgment is void for want of jurisdiction in the court to render it, because the specifications do not charge any crime known to the laws of the United States, in that it does not appear therein that the property alleged to have been taken was not the property of

the accused, and also because it is not averred therein that the property was in the care, possession and custody or control of the person from whose possession it is alleged to have been taken.

The only part of the charge appearing in the petition is a copy of three specifications, the first of which reads:

"Specification 1: In that Private Roy W. Marshall, Company 'K', 31st Infantry, Private Gilbert Frey, Company 'K', 31st Infantry, Private Gerald E. Troxler, Company 'K', 31st Infantry, and Private James F. Hyde, Company 'K', 31st Infantry, acting jointly and in pursuance of a common intent, did, at Vladivostok, Siberia, on or about the 14th day of January, 1920, by putting him in fear, feloniously take from the presence of Van Fun Un, 40 Koreaskays Street, Vladivostok, Siberia, the sum of about ten thousand (10,000) Roubles, value about Fifty Dollars ($50.00)."

The second and third specifications differ from the first only in the name and place of residence in Vladivostok of the person robbed and as to the value of the property taken.

The argument in support of the contention of the petitioner is that the allegation that the property was taken "from the presence of" the persons named does not imply that it was taken unlawfully from the presence, possession or custody of another or that it was not at the time the property of the accused.

The jurisdiction of the court martial was derived from the act of Congress embodying the Articles of War which, it is declared, shall, at all times and in all places, govern the Armies of the United States (39 Stat. 650, 670), and the charge of robbery was certainly framed under Article 93 thereof, providing that: "Any person subject to military law who commits . . . robbery shall be punished as a court-martial may direct."

The sufficient answer to this contention that the specifications do not charge any crime known to the laws of the United States is that § 284 of the Federal Criminal Code, providing for the punishment of robbery, reads: "Whoever, by force and violence, or by putting in fear, shall feloniously take from the person or presence of another anything of value, shall be imprisoned not more than fifteen years."

This has been accepted as an accurate and authoritative definition of robbery from Blackstone, Book IV, p. 243 (Cooley's ed.), to Bishop's New Criminal Law, Vol. II, §§ 1177, 1178. Taking property from the presence of another feloniously and by putting him in fear is equivalent to taking it from his personal protection and is, in law, a taking from the person. Men do not feloniously put others in fear for the purpose of seizing their own property.

It is not necessary that the charge in court martial proceedings should be framed with the technical precision of a common-law indictment, and we cannot doubt that the one in this case clearly shows jurisdiction in the court over the accused and over the offense with which he was charged, and that the latter was sufficiently described to advise defendant of the time and place and circumstances under which it was claimed he had committed the crime, to enable him to make any defense he may have had.

It is also charged that there was no evidence of guilt before the court-martial other than the confession of the accused, which, it is averred, was made, under oath, to and at the instance of his superior officer, under duress, whereby it is alleged he was compelled to become a witness against himself in violation of the Constitution of the United States. This, in substance, is a conclusion of the pleader, unsupported by any reference to the record and, at most, was an error in the admission of testimony,

which cannot be reviewed in a *habeas corpus* proceeding. Cases, *supra*.

The remaining allegations are trivial.

For the reason that the petition did not state facts sufficient to entitle petitioner to the writ of *habeas corpus*, the judgment of the District Court is

Affirmed.